

**DEPARTMENT OF TRANSPORTATION
1120 N Street, MS 36
Sacramento, CA 95814**

March 12, 2009

NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

Pursuant to the requirements of Government Code section 11346.8 (c), and section 44 of Title 1 of the California Code of Regulations, the California Department of Transportation is providing notice of changes made to proposed regulations in Chapter 4 of the California Code of Regulations, which were the subject of a regulatory hearing on December 1, 2008 and during a written comment period between November 1, 2008 and December 1, 2008. These changes are in response to comments received regarding the proposed regulations. Please note that the initial proposed amendments including strike-outs for deletions and italics for additions are in black and the new proposed changes are in blue.

The text can be accessed through the Office of Outdoor Advertising's website at:

http://www2.dot.ca.gov/oda/download/Notice_of_Modification.pdf

If you do not have Internet access, copies of the modified text may be requested from Kenneth Parmelee at the address below.

If you have any comments regarding the proposed changes, the Department will accept written comments by March 27, 2009. All written comments must be submitted to the Department no later than 5:00 p.m. on March 27, 2009 and addressed to:

Kenneth Parmelee, Office of Outdoor Advertising
Department of Transportation
1120 N St. MS 36
Sacramento, CA 95814

All written comments received by March 27, 2009 which pertain to the indicated changes will be reviewed. The Department's staff will respond to the comments as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text.

TITLE 4. BUSINESS REGULATIONS

DIVISION 6. OUTDOOR ADVERTISING, DEPARTMENT OF TRANSPORTATION

CHAPTER 1. OUTDOOR ADVERTISING--GENERAL

§ 2241. Enforcement.

(a) The Department of Transportation and the Director or the Director's designee are hereby authorized and directed to enforce the provisions of the Act and these regulations, and are further authorized and directed to revoke a license or a permit and remove a Display for violating any provision of the Act or these regulations.

(b) All hearings appeals provided for in these regulations, such as from notices of violation or denial of permit applications, shall be conducted in accordance with the provisions of Chapter 5, commencing with Section 11500 of Part 1 of Division 3 of Title 2 of the Government Code (the "California Administrative Procedures Act"), except that the proceedings shall be recorded by electronic means only, unless a party agrees in advance to pay all costs of having the proceeding transcribed by a certified court reporter. Any such hearing must be requested by filing a written appeal with ~~the Director (c/o the~~ Office of Outdoor Advertising), Division of Traffic Operations, 1120 N Street (MS-36), Sacramento, CA 95814 within thirty (30) calendar days of date of mailing of the written violation notice, denial, revocation or other determination being appealed. The hearing shall be calendared pursuant to Government Code section 11512 and 11517(c) and decide all issues involved, including assessment of costs or penalties, including, but not limited to those provided by Business and Professions Code, section 5482, 5484 and 5485. ~~The Director shall thereafter issue a decision, based on finding of fact, affirming, modifying or vacating the denial, revocation or other determination.~~

(1) The written appeal shall contain the name and company affiliation, if any, address and phone number of the person appealing, the permit or license number, if any, the location of the billboard, with specificity and a statement of the basis for the appeal.

(2) No person shall be entitled to more than one hearing stemming from the same written violation notice, denial, revocation, other determination or set of facts. Hearings will be held at the office designated in Government Code section 11508. in Sacramento, Los Angeles, or San Diego. The Director may agree to hold a hearing at a different locale under extraordinary circumstances.

(3) The failure of a permittee or other person who has appealed to appear at the time and place of the hearing shall be deemed a withdrawal of the appeal, and the written violation notice, denial, revocation or other determination shall constitute a final order of the Director and not be subject to further administrative review.

(4) Nothing herein prevents the Department and affected party or parties from attempting to resolve the dispute informally; however, informal attempts at resolution shall not extend the thirty (30) day period to file an appeal under these regulations.

(5) The Director may specify decisions that may have application to similar situations as “precedent decisions,” pursuant to Government Code Section 11425.60.

(6) An unsuccessful appellant will be responsible for administrative costs of the appeal, including, but not limited to, any charges assessed to the Department of Transportation by the Office of Administrative Hearings. Any party who petitions for review in the Superior Court will be responsible for all costs of preparing the record of the proceedings.

AUTHORITY:

Note: Authority cited: sections 5250 and 5415, Business and Professions Code.
Reference: sections 5250 and 5463, Business and Professions Code; and 23 U.S.C., section 131(r)(2).

HISTORY:

1. New section filed 6-25-76; effective thirtieth day thereafter (Register 76, No. 26).
2. Amendment of NOTE filed 7-22-77 as procedural and organizational; effective upon filing (Register 77, No. 30).
3. Repealer and new section filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
4. Designation of existing section as subsection (a) and new subsections (b)-(b)(4) filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2242. Definitions.

In addition to the terms defined in the California Outdoor Advertising Act, Business and Professions Section 5200 et seq., the following terms when used in regard to these regulations or the Act in this Title 4, Division 6, have the following meanings:

(a) "Accepted" or "accepts" means the official act of acceptance by the Department of a contractor's completion of a highway project acknowledging the contractor has performed all obligations of a highway contract.

(b) "Act" means the California Outdoor Advertising Act, Sections 5200 et seq., Business and Professions Code.

(c) "Adjacent To" means located within, either in whole or part, an area formed by measuring 660 feet laterally from the edge of the right-of-way of a landscaped freeway sections along a line perpendicular to the center line of the freeway.

(d) "~~Changeable~~ Message Center Display" means a display where the message can be changed remotely or without manually changing copy on the display. Electronic Message centers and tri-visions are examples of changeable message displays ~~occurring more than once every twenty-four hours~~.

(e) "Chief Landscape Architect" means the employee of the Department of Transportation charged with statewide responsibility for supervising Highway Planting Projects.

(f) "Completed" means a contractor has performed all obligations under a highway project contract.

(g) "Continuous Planting" means State right of way contiguous to the traveled way which is planted with Ornamental Vegetation in accordance with standard landscaping practices. A physical break in the Planting of less than 200 feet for items such as a highway overcrossing or undercrossing, a stream, a canal, a stairway, a culvert, or a water system is not a gap and may not end a Continuous Planting.

(h) "Certificate of Sufficiency," formerly known as "Design Certification," means the design engineer for a given project certifies to Right of Way and Asset Management that the right of way indicated on the project maps is the area necessary for a given project.

(i) "Deputy Director Project Development" means the Deputy Director of Project Development of the Department ~~of the Department~~ of Transportation.

(j) "Display" means an advertising Display as defined in Section 5202.

(k) "Electronic Message Display," also known as an electronic message center, is a message center display that utilizes computer-generated messages or some other electronic or distant means of changing copy. These include displays using incandescent lamps, LEDs, LCDs, flipper matrixes or similar technologies.

~~(k)~~ (l) "Extension" means an Incidental increase in size of the advertising area which does not exceed the height, length, or total area allowed for in Section 5408(a) of the act.

~~(l)~~ (m) "Facing" means the portion of the Display that contains advertising copy; an advertising Display may have more than one facing.

~~(m)~~ (n) "Highway Planting Project" means an area of State highway right-of-way planted in conformance with plans developed or approved by the Department.

~~(n)~~ (o) "Imprint" means a marker (a stake or a flag) visible and legible from the highway that identifies the applicant by name or logo placed at the location of proposed display.

~~(o)~~ (p) "Incidental" means up to 33 percent of the total advertising area of the Display as authorized according to the Department's records and relates to the specific

advertising copy. Measurement is made based on the height and the length but not the depth.

~~(p)~~ (q) "Landscape Architect" means a person employed by the Department who holds a certificate to practice Landscape Architecture in California under the authority of Division 3, Chapter 3.5, of the Business and Professions Code (5615 et seq.).

~~(q)~~ (r) "Light Box" or "sign cabinet" means a portable unit that is Incidental to the Display and its message does not flash, is not in motion, and does not change ~~its~~ advertising copy more than once every two minutes.

~~(r)~~ (s) "Ornamental Vegetation" means lawns, trees, shrubs, flowers, or other Plantings designed primarily to improve the aesthetic appearance of the highway. Inert material specifically placed to highlight the Ornamental Vegetation is considered part of the Ornamental Vegetation.

~~(s)~~ (t) "Office of Outdoor Advertising" means that unit of the Department which is delegated by the Director the responsibility of enforcing the Act and these regulations.

~~(t)~~ (u) "Penalty Fee" means a fee charged for late renewal of a license or a permit.

~~(u)~~ (v) "Permittee" means the applicant or a subsequent designee on record with the Department as owner of the outdoor advertising permit to place and maintain a specific Display.

~~(v)~~ (w) "Planting" means the placing or putting into the ground of any vegetation or seeds of vegetation; to set or sow with seeds or plants.

~~(w)~~ (x) "State Law" means only statutes enacted by the State Legislature, initiative process, or state constitutional provisions.

(y) "Static Display," also known as a conventional or traditional display, means an advertising display whose copy can only be changed manually at the location of the display. "Readerboards", where some or all of the display's copy are words, letters, and/or numbers placed manually on the display are considered Static Displays.

(z) "Tri-vision Displays" means a display face made with triangular louver construction intended to display three different advertising messages in a predetermined sequence.

AUTHORITY:

Note: Authority cited: sections 5250 and 5415, Business and Professions Code.

Reference: sections 5200, 5202, 5216, 5250, 5440 and 5485, Business and Professions Code.

HISTORY:

1. New section filed 6-25-76; effective thirtieth day thereafter (Register 76, No. 26).
2. Amendment of NOTE filed 7-22-77 as procedural and organizational; effective upon filing (Register 77, No. 30).

3. Renumbering of former Section 2242 to Section 2243 and new Section 2242 filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
4. Amendment of subsection (h) filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2243. On-Premise Display.

On-premise Display is defined under sections 5272, 5405(b), 5405(c), and 5442 of the Act. A Display consisting of the following is ~~outdoor advertising and~~ not an on-premise Display and is subject to all applicable provisions of the Act and these regulations:

(a) A Display which advertises directions to, or the sale or lease of the property on which it is located, but which also advertises any product, service, or business activity unrelated to the sale or lease of the property on which the Display is located.

(b) A Display which advertises activities conducted on the property on which the Display is located, but which also advertises other activities not conducted on the property on which the Display is located.

(c) A Display which advertises a brand name, trade name, product or service only incidental to the principal activity conducted on the property, or from which the business or property owner derives rental income.

(d) A Display placed at or near the end of a narrow strip of property, which is contiguous to the property on which the advertised activity is conducted.

(e) A Display which solely advertises the sale or lease of the property upon which it is placed, but which also identifies a corporation or business activity as the property owner more conspicuously than the for sale or lease message.

(f) A Display in a city, county, or city and county that issues licenses, permits, or other specified approvals for on-premise displays that has not obtained such license, permit or other specified approval.

AUTHORITY:

Note: Authority cited: Sections 5250 and 5415, Business and Professions Code.

Reference: Sections 5272, 5273, 5274, 5405(b), 5405(c) and 5442, Business and Professions Code; and 23 C.F.R., section 750.709.

HISTORY:

1. Renumbering and amendment of former Section 2242 to new Section 2243 filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
2. Amendment of first paragraph filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2244. ~~On-Premise Displays~~ Within a Redevelopment Project Areas.

~~The applicant for an advertising display to be constructed pursuant to Sections 5273, 5273.5 or 5274 of the Act shall accurately complete and submit the Outdoor Advertising Structure Permit/Application, Form ODA-002 which is incorporated by reference, with a Redevelopment project boundaries map, application, permit fees and a Certification in writing by the Redevelopment Agency that the display is in the boundary area of a redevelopment agency project and will only advertise businesses and activities within the project where the advertising display is placed. The Redevelopment Agency shall provide the Department with a list of all qualifying businesses and activities in the specified project area. It shall be the obligation of the advertising display owner to demonstrate that any business or activity advertised meets the standards of the Act if it is not included on the list of qualifying businesses and activities provided by the Redevelopment Agency. After certifying the display meets the criteria of Sections 5273, 52.73.5 or 5274, it shall be considered an on-premise display and no permit will issue. The applicant will pay a processing review fee equal to the current amount of a permit application fee.~~

(a) Displays placed pursuant to Sections 5273 and 5273.5 of the Act shall only be placed after a permit is issued to the applicable Redevelopment Agency, and will be referred to as “Redevelopment Displays.” The Redevelopment Agency shall apply for a permit on a form approved by the Department and pay all fees required by sections 5485 and 5486 of the Act. The application shall include a project boundaries map and a list of businesses and activities developed within the boundary limits, of and as part of, an individual redevelopment project that may be advertised on the display. All redevelopment display advertising copy must refer to a business (or businesses) physically located within a redevelopment project area established pursuant to Health and Safety Code Section 33300 et seq. “Product” advertising that does not refer to an actual business located within the redevelopment project area will not be allowed. The Redevelopment Agency will be responsible for insuring the display and its messages comply with all applicable legal and regulatory provisions. The Redevelopment Agency may not assign the permit.

(b) To qualify as a “business” or “activity” for the purposes of this section, the business must be open to the public or be a manufacturing facility or factory with employees present at that locale at least 40 hours a week with all necessary utilities and business fixtures. The business cannot be operated with the primary purpose of allowing advertising pursuant to this section; simply authorizing or designating employees of another business to be representatives will not qualify as a business. Any activity listed in section 2401(d) shall not be considered a business for purposes of this section.

(c) Redevelopment agencies that have approved displays pursuant to Section 5273 and 5273.5 of the Act prior to the effective date of this section, shall have ninety (90) days to submit an application after the Department mails an application to them.

(d) If any display placed pursuant to this section needs to be acquired or relocated to facilitate a public project, compensation shall be paid based on the value of the display as an on-premise display pursuant to section 5492 of the Business and Professions Code.

AUTHORITY:

Note: Authority cited: Sections 5250 and 5415, Business and Professions Code.

Reference: Sections 5273, 5273.5, and 5492, Business and Professions Code.

HISTORY:

1. New section filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
2. Amendment of section and Note filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2245. Extension of Time Limit for an On-Premise Display Within a Redevelopment Project.

A Redevelopment Display is considered on-premise within a redevelopment project for a period of 10 years or the completion of the project, whichever first occurs, unless an arrangement is made between the redevelopment agency and the Department to extend the period for good cause.

(a) The Department provides written notice to the redevelopment agency governing the project and a copy to the Permittee if different, that the time limitation is expiring, after which Sections 5272 and 5405 of the Act apply.

(b) The redevelopment agency may request the Department to extend the time limit for a Display to be considered on-premise within a redevelopment project. The request must be in writing and made before the 10-year period expires or within 30 days of the Department's notice, whichever is later. The written request must also identify the good cause for extension and the estimated project completion date. Any extension will not exceed ten years. More than one extension may be granted.

(c) The Department provides a written response within 30 days of receiving the request for extension from the redevelopment agency.

(d) If an extension is not arranged, the Display must meet the requirements of Sections 5272 and 5405 of the Act, or a new permit must be obtained. If the Display does not meet one of those requirements, the Display must be removed or is subject to the violation, penalty and removal provisions of the Act and these regulations.

AUTHORITY:

Note: Authority cited: Sections 5250 and 5415, Business and Professions Code.

Reference: Sections 5272, 5273, 5405 and 5485, Business and Professions Code.

HISTORY:

1. New section filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
2. Amendment of subsection (d) and amendment of Note filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2270. Customary Maintenance.

"Customary maintenance" means any activity performed on a Display for the purpose of actively maintaining the Display in its existing approved physical configuration and size dimensions at the specific location approved on the application for State Outdoor Advertising Permit, or at the specific location officially recorded in the records of the Department for a legally placed Display, for the duration of its normal life.

(a) Customary maintenance includes the following activities:

- (1) Changing of the advertising message.
- (2) Adding an Extension to an outside dimension of a Display as incident to the copy for a temporary period up to three years.
- (3) The sale, lease, or transfer of the Display or its Permit.
- (4) Adding a Light Box.

(b) Customary maintenance does not include the following (all of which acts are considered as a "placing" of a new advertising Display):

- (1) Raising the height of the Display from ground level.
- (2) Relocating all or a portion of a Display.
- (3) Adding a back-up or second Facing to a single Facing Display.
- (4) Increasing any dimension of a Facing except as permitted by Section 2270(a)(2).
- (5) Turning the direction of a Facing.
- (6) Adding illumination or a ~~Changeable~~ message center display, including, but not limited to, "tri-vision" signs, with the exception of a light box.
- (7) Conversion of a static display to a message center display.

AUTHORITY:

NOTE: Authority cited: Sections 5250 and 5415, Business and Professions Code.
Reference: Section 5415, Business and Professions Code.

HISTORY:

1. New section filed 6-25-76; effective thirtieth day thereafter (Register 76, No. 26).
2. Amendment of NOTE filed 7-22-77 as procedural and organizational; effective upon filing (Register 77, No. 30).
3. Amendment filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
4. Amendment of subsection (b)(6) filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2271. Destroyed Nonconforming Display.

~~(a) A Display is destroyed and not eligible for customary maintenance when for 60 days after notice from the Department, it remains damaged and is not used for the purpose of outdoor advertising in the configuration (size, Facings, location, structure) approved by the Department.~~

~~(b) When the Department becomes aware of or identifies a damaged Display, the Department mails a written notice by certified mail to the Permittee beginning the 60-day time period for the Permittee to refurbish, replace, rebuild, or re-erect in kind or smaller the damaged Display and to place advertising copy. An "available for lease" or similar message that identifies the advertising availability of the Display on which the message is placed is advertising copy as long as the message contains a valid telephone number or address to contact for information, if the display has been otherwise refurbished, replaced, rebuilt, or re-erected in kind. Refurbishing, replacing, rebuilding or re-erecting shall be to the approved characteristics as recorded in the department's records for the Display. This notice is not necessary if the Permittee has completed repair back to the approved characteristics prior to notice being issued by the Department.~~

~~(c) The Permittee has until the end of the 60-day time period identified in the Department's notice to repair, replace, rebuild, or re-erect in kind the damaged nonconforming Display and place advertising copy. Upon receiving written notice from the Permittee showing good cause prior to the 60th or last day of the time period, the Department may extend the established time period not to exceed a total of six months. In such case, the Department shall issue a written response identifying by what date the work must be completed.~~

~~(d) When the Display is not restored and advertising is not placed before the last day of established time period, the Display's customary maintenance is ended and the Display is deemed destroyed. When the Display is deemed destroyed, the permit is revoked,~~

~~subject to appeal and the remains of the Display are subject to removal under the violation process in Chapter 3.6, commencing with section 2440 in Title 4 of the California Code of Regulations. After the permit is revoked, a permit may not be issued for the location unless the Display conforms to all laws and regulations in effect at the time of application. The last Permittee is responsible for the removal of all remnants of the destroyed Display.~~

(a) A Display is destroyed and not eligible for customary maintenance, repair, replacement, refurbishment, rebuilding, or re-erection without a new permit when (i) all the above-ground portions of the structure are totally removed; (ii) the above-ground portions of the structure are totally removed but for portions of the posts, poles or other supports; (iii) the structure is physically unable to support advertising panels, or (iv) over 50% of the display has been damaged or destroyed, based on the current value of the display as shown on the Department's valuation schedule, prepared in accordance with Business and Professions Code Section 5413.

(b) The permit for a destroyed display shall be revoked. When a display is deemed destroyed and its permit has been revoked, the former Permittee shall have 30 days to appeal after notice of the revocation of the permit is sent by certified mail.

(c) A display which is destroyed due to vandalism and other criminal or [tortious](#) acts may be re-erected in its former configuration, and its preexisting permit will be reissued, provided all work is completed within 60 days of the Department's notice. The Permittee has the burden to demonstrate that the display was destroyed due to vandalism or other criminal or tortuous acts.

(d) Except as provided in (c) above, any new permit issued under this section will have to meet all the standards of the Code and these regulations at the time it is issued.

AUTHORITY:

Note: Authority cited: Sections 5250 and 5415, Business and Professions Code.
Reference: Sections 5225 and 5463, Business and Professions Code; and 23 CFR 750.707(d)(6)(i).

HISTORY:

1. New section filed 6-25-76; effective thirtieth day thereafter (Register 76, No. 26).
2. Amendment of NOTE filed 7-22-77 as procedural and organizational; effective upon filing (Register 77, No. 30).
3. Repealer and new section filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
4. Amendment of section heading and subsections (a)-(b) and (d) filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2272. Abandoned Nonconforming Display.

(a) A Display is abandoned when it ceases to exhibit current advertising copy. ~~or the Display is removed. An~~ "An available for lease," or similar message that identifies the advertising availability of the Display on which the message is placed, is considered advertising copy as long as the message contains a valid telephone number or address to contact for information.

~~(b) The Department shall send a written notice, by certified mail, to the Permittee of a Display that has been removed requiring the Permittee to replace the removed Display within sixty (60) days of the date of the Department's notice.~~

~~(e)~~ (b) The Department shall send a written notice, by certified mail, to the Permittee of a Display which has ceased to exhibit current advertising copy requiring the Permittee to place advertising copy on the Display within sixty (60) days of the date of the Department's notice.

~~(d)~~ (c) If the Permittee fails to exhibit current copy within sixty (60) days of the Department's notice pursuant to comply with subsections (b) or (e) of this regulation the permit shall be revoked, subject to appeal, and no new permit may be issued for this location unless it conforms to the laws and regulations in effect at the time of application. The last Permittee is responsible for the removal of all remnants of the abandoned Display.

~~(e)~~ (d) Any Permittee served with a notice of revocation may appeal this determination to the Director pursuant to Section 2241(b) of these Regulations.

AUTHORITY:

Note: Authority cited: Sections 5250 and 5415, Business and Professions Code.
Reference: Sections 5415 and 5463, Business and Professions Code; and 23 CFR 750.707(d)(6)(i).

HISTORY:

1. New section filed 6-25-76; effective thirtieth day thereafter (Register 76, No. 26).
2. Amendment of NOTE filed 7-22-77 as procedural and organizational; effective upon filing (Register 77, No. 30).
3. Repealer and new section filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
4. Amendment of section heading and section filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2401. Measurement of Distances from a Commercial or Industrial Activity.

(a) A Display is placed in a business area when the Display is on property zoned as commercial or industrial by the local zoning authority and is within 1,000 feet of a commercial or industrial activity.

(b) To determine if a Display is within 1,000 feet of a commercial or industrial activity, measurement is made "in each direction". Measurement of distance to a Display is made along or parallel to the edge of the pavement of the main-traveled way from the outer edge of a commercial or industrial activity. The display also is within 1,000 feet when measuring the summation of the distance of "A" and "B." Refer to Diagram 3-1, Figures 1 and 2.

DIAGRAM 3-1

[See Illustration In Original Printed Version]

(c) An "activity" is located within 1,000 feet of the right of way and includes all buildings, structures, and related commercial and industrial uses, such as a driveway or a parking lot.

(d) Examples of activities not considered commercial or industrial include, but are not limited to, the following:

- (1) A Display.
- (2) Agricultural, forestry, grazing, farming and related activities, including, but not limited to wayside fresh produce stand vending.
- (3) A commercial or industrial activity that is unbuilt, transient, temporary, or open for less than 100 days a year.
- (4) Railroad tracks.
- (5) An activity conducted in a building principally used as a residence.
- (6) Any activity that does not have state or local business licenses and/or permits which are required to legally engage in the qualifying activity.
- (7) An activity, such as an office or desk, that functions primarily to refer customers to other areas of operation.

(8) A computer station.

(9) Leasing or using space primarily to create a commercial or industrial activity to justify placing an outdoor advertising display.

AUTHORITY:

Note: Authority cited: Sections 5250 and 5415, Business and Professions Code.

Reference: Sections 5205, 5223 and 5408, Business and Professions Code; 23 CFR Section 750.708; and 23 USC Section 131.

HISTORY:

1. Amendment filed 8-21-74; effective thirtieth day thereafter (Register 74, No. 34).
2. Repealer of former section 2401 and renumbering of former section 2402 to section 2401, including amendment of section heading, section and Note, filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
3. New subsection (d)(6) filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2422. Permit Application Process.

(a) The applicant shall, in accordance with the Act:

(1) Accurately complete and sign the current Outdoor Advertising Structure Permit/Application, Form ODA-0002 (Rev. 11/98). A separate application will be required for each side of a multi-sided display, regardless of whether it is a “back-to-back,” “V,” or “tri-sided” display.

(2) Submit the completed application and fees to the Department, Division of Traffic Operations, Office of Outdoor Advertising, 1120 N Street (MS-36), Sacramento, CA 95814. ~~at the address specified on the application.~~

(3) Place and maintain an Imprint at the proposed Display location.

(4) Provide written evidence that the owner or other person in control or possession of the property and the city and county with land use jurisdiction over the property has consented to the placing of the advertising display. Evidence of property owner consent shall be a form of a copy of a lease, license or other land use agreement or another form of written acknowledgement from the owner that such consent has been given. The economic terms of any such agreement need not be included. The consent of the city or county shall be demonstrated by producing a copy of the applicable building or sign permit, or other official act of the city and county used in that jurisdiction to authorize construction, or to demonstrate that the city or county requires no specific consent to construct an advertising display.

(5) Correct any technical application deficiencies (“incomplete application”), pursuant to notification as required by (b)(3) within 30 days. The applicant may request an extension of the 30-day time period. The request must be in writing.

(b) The Department shall, in accordance with the Act:

(1) Date and time stamp the application on the date and in the order received by the Office of Outdoor Advertising in Sacramento.

(2) Review the application on the basis of its qualifications as of the date received (For example, the required business activity and zoning must exist on the date the application is received). The application is processed in accordance with the following subsections (A) through (G).

(A) First priority is given to renewing a permit for a legal Display (constructed or not constructed).

(B) An application for a legally placed Display that did not previously require a permit is processed before an application for a new Display.

(C) An application to place a new Display along an existing highway is processed in the order received. However, if the application for a new Display along an existing highway is incomplete, and a complete application is subsequently received and the first application is still incomplete, the complete application will be processed before the incomplete application.

(D) An application for placing a new Display along an existing highway where the copy will be visible from a new alignment of an interstate or a primary

highway and the location is nonconforming to the new alignment is not accepted after Certificate of Sufficiency is executed.

(E) An application for placing a new Display along a new alignment of an interstate or primary highway is accepted on or after the date the highway project is Accepted. For the purposes of this section, “a new alignment” means that the main-traveled way of the highway is constructed on a right of way where at least 70 percent of the right of way was not previously used for highway purposes.

(F) An application to relocate an existing permitted Display to accommodate widening or extensive modification of an interstate or a primary highway is processed before an application to place a new Display. For purposes of this section, “widening or extensive modification” means the work is being conducted on right of way where at least 30 percent of the right of way was previously used for highway purposes.

(G) An application for a new Display received after a Certificate of Sufficiency is executed for widening or extensive modification of an interstate or a primary highway is not processed until the orderly relocation of an existing Display is completed, as coordinated by the Department. The Department issues a notice to the applicant when processing is delayed for this reason. The processing time begins after the orderly relocation of an existing Display is completed.

(3) Provide a written 30-day deficiency notice to the applicant when it is determined the application is incomplete, there is a deficiency, such as the Imprint is missing or information on the application is missing, is in error, or conflicts with findings. Failure to correct the deficiency within the time allowed results in denial of the application. Such notice or correction does not change the provisions of subsection (b)(2) of this Section that all qualifications are determined as of the date the application is initially received.

(4) Provide a final decision issuing a legal permit or denying permit issuance identifying the noncompliance with law- within ten days after compliance or noncompliance is determined. Confirming compliance or noncompliance shall occur within sixty (60) days from the date the application is received, excluding the time period for which notices are issued under subsection (b)(3) of this Section. The permit or denial notice is issued within 60 days from the date the application is received, excluding the time periods for which notices were issued under subsection (b)(3).

(5) Reserve a location for ninety (90) days in accordance with Section 5354(b) and (c) of the act, if a written request from the city or county with land use jurisdiction over the proposed location is received in lieu of a building or sign permit, properly acknowledged by the City Council or Board of Supervisors or their official designee. The description of the proposed location in the city or county's notice shall be consistent with the location requested on the permit application. If a city or county requests an additional thirty (30)-day hold on a location in accordance with section 5354(c), in addition to the requirements for an initial 90-day hold specified above, the city and county must detail

the extenuating circumstances meriting an additional 30 days. Examples of such extenuating circumstances include, but are not limited to, an inability to properly notice a necessary hearing within the initial 90 days, the unavailability of a necessary witness or property owner, the discovery of newly found evidence or facts, or the late objection of an affected property owner.

(c) An Application whose permit application is denied may appeal that determination in accordance with the provisions of Section 2241(b) of these Regulations. Until such appeal is finally determined, no permit shall be issued to any other applicant that would affect the legality of a denied permit application until completion of the appeal.

AUTHORITY:

Note: Authority cited: Sections 5250 and 5415, Business and Professions Code.
Reference: Sections 5252 and 5350-5358, Business and Professions Code; and Section 15376, Government Code.

HISTORY:

1. New section filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
2. New subsection (a)(4), subsection renumbering, amendment of subsections (b)(2)(D) and (b)(2)(G) and new subsections (b)(5)-(c) filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2422.1 Permit Fee.

(a) The annual fee for each advertising display shall be ~~one hundred sixty~~ sixty dollars ~~(\$100.00)~~ (\$60.00) commencing with the 2009 permit year. The fee shall increase ~~in the 2007-2008 fiscal year and in the 20012-2013 fiscal year by an amount equal to the increase in the California Consumer Price Index~~ to seventy dollars (\$70.00) for the 2011 through 2015 permit years and to eighty dollars (\$80.00) for the 2016 and 2017 permit years, and any following years until this section is amended.

~~(b) Permit holders that paid for a renewal term of five years pursuant to Business and Professionals Code, Section 5360 at ninety two dollars (\$92) per year will not be subject to paying this increase until December 31, 2008.~~

NOTE: Authority cited: Sections 5250 and 5415, Business and Professions Code.
Reference: Section 5485(a)(2), Business and Professions Code.

HISTORY:

1. New section filed 11-16-2006; operative 12-16-2006 (Register 2006, No. 46).

§ 2424. Permit Renewal Process.

(a) A permit must be renewed pursuant to Section 5360 of the Act. The permit renewal process consists of the following:

(1) The Department mails a renewal application for a term of five years to the Permittee at the Permittee's last address on the Department's record at least 30 days before the expiration date.

(2) The Permittee returns the current completed ~~Form ODA-0013(A), Application For Outdoor Advertising Permit Renewal 1999-2003 (Rev. 09/99)~~ which is incorporated by reference, and fee to the Department postmarked on or before December 31 of the year in which the permit expires to avoid a penalty. The Permittee would be scheduled to pay as follows:

(A) A Permittee holding 10 or more permits may pay one-fifth of the fee (pro-rata fee) to the Department on an annual basis postmarked each year on or before December 31 to avoid a penalty fee. A Permittee shall be responsible for paying the then current annual fee at the time of each pro-rata payment.

(B) A Permittee holding less than 10 permits must pay the total fee every five years on or before December 31 of the year in which payment is due to avoid a penalty fee. A Permittee prepaying for five years may be assessed any increase in the annual fees, due by December 31 of the year which payment is due.

(C) The Permittee is responsible for renewing the permit, even if a renewal notice is not received. A Permittee shall immediately contacting the Department if the Permittee's address changes or a renewal application is not received.

(3) A permit is expired and is subject to a mandatory penalty of \$100.00 if the renewal application and fee are received by the Department postmarked after December 31 of the year in which the permit expires or the pro rata payment is due.

(4) The Department shall issue the permit after receiving the completed renewal application, permit fee or pro-rata fee, and after determining the Display is not in violation of any provision of the Act or these regulations and an unexpired building permit has been issued, if the display has not been constructed. Permits issued prior to December 31, 2002, for Displays that have not been constructed or have not obtained an unexpired building permit, will not be revoked until June 30, 2005, if the applicable city or county confirms that a building permit is being actively considered for the Display. The Department will also review its records to determine there is no active violation notice on record for the Display as of December 31 of the year in which the permit expires. The permit entitles the permittee to place the permitted display for the term of the permit, provided all pro rata fees are timely received.

(5) If the Department fails to issue a permit according to this Chapter and the Act within one year after receiving a complete and valid renewal application and required fees, the permit is considered renewed for the year of the renewal application. An applicant shall provide a certified mail receipt or signed acknowledgment of receipt by a Department representative to invoke this provision. This section does not apply to a permit under review pursuant to Chapter 3.6 commencing with Section 2424(C) in Title 4 of the California Code of Regulations or a legal action.

(6) The following occurs when a permit is not renewed in accordance with (a)(1) to (a)(4) of this section:

(A) The Department provides written notice by certified mail to the Permittee at the address on record at least thirty (30) days before the cancellation date indicating the permit is expired, is not in compliance with the Act, or the permit fee or the pro-rata fee is not received. However, the permit may be renewed with a penalty fee.

(B) The Permittee has until December 31 of the first year following the expiration of the permit to return the renewal application, permit fee or pro-rata fee, and penalty fee or notify the Department to cancel the permit because the Display has been removed.

(C) The Department issues the permit after receiving the completed renewal application, permit fee or pro-rata fee, and after determining the Display is not in violation of any provision of the Act or these regulations. The Department will also review its records to determine if there is no active violation notice on record for the Display as of December 31 of the year in which the permit expires.

(D) When the Permittee fails to comply with subsection (6)(B), the permit is not renewable and the Director shall notify the Permittee by certified mail that the permit will be revoked in thirty (30) days. Any Permittee served with a notice of revocation may appeal this decision in accordance with the provisions of section 2241(b) of these Regulations.

(7) A permit must be renewed by the end of the first year after expiration or lose eligibility for renewal.

(8) The renewal application for a valid, unrevoked, and unexpired permit shall be mailed when issuance of the permit is pending resolution of a violation notice or a legal action. The Permittee shall continue to comply with the renewal requirements. The permit is issued only when a final decision is made by the Director or by a court of law that does not uphold the violation. Fees will be deposited into the State Highway Account and when appropriate, refunded upon the final decision.

(9) Permits for multisided displays that were originally placed under one permit shall be renewed with a separate renewal permit issued for each side. Multisided displays

that were only assessed a permit fee as a single display as of December 31, 2008, shall continue to only be liable for a permit fee for a single-faced display.

AUTHORITY:

Note: Authority cited: Sections 5250 and 5415, Business and Professions Code.
Reference: Sections 5358, 5360, 5463 and 5485, Business and Professions Code.

HISTORY:

1. New section filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
2. Amendment of subsections (a)(2)(A)-(B), (a)(3)-(4), (a)(6)(D) and (a)(8) and amendment of Note filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).
3. Change without regulatory effect amending subsection (a)(4) filed 2-28-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 9).

§ 2444. Causes for Revocation of an Outdoor Advertising License.

(a) Causes for revocation of an Outdoor Advertising License pursuant to Section 5463 of the Act exists when one of the following occurs:

(1) Licensee fails to pay his annual License Fee. Before a License is revoked pursuant to this section, a Licensee shall be given written notice by certified mail that the license fees have not been received, and if payment is received within thirty days of the date of the notice the license will be renewed.

(2) The Licensee fails to timely pay fines, penalties or assessed removal costs. Before a License is revoked pursuant to this section, a License shall be given written notice by certified mail that the payment for the fine, penalty or assessed removal costs have not been received, and if payment is received within thirty days of the date of notice, the license will not be revoked.

(3) A Licensee who has received three notices of violations for placing a Display without first obtaining a permit pursuant to Section 5463 of the Act within any twenty-four month period which have either not been appealed or have been upheld by the Director pursuant to Section 2242 and not been corrected, unless the matter is still pending in State court.

(4) A Licensee who has damaged two or more trees or shrubs in violation of Streets and Highways Section 730.5 in any two-year period and not made restitution provided for by Streets and Highways Code Section 730.5.

(5) A licensee obtains a permit or maintains a display in violation of the provision of the Act and/or regulations through undue influence, bribery, violation of a Court Order, or other illegal act.

(b) Upon the revocation of an Outdoor Advertising License, all permits issued to that Licensee shall be revoked after thirty (30) days' written notice unless they are transferred within one year of the date of license revocation to another Licensee or person not affiliated in any manner with the Licensee whose License was cancelled. After a License has been revoked, that Licensee may apply for a new License after two years if all previous violations have been corrected.

(c) Any Licensee served with a notice or revocation may appeal this determination to the Director pursuant to the provisions of Section 2241(b) of these regulations.

AUTHORITY:

Note: Authority cited: Sections 5250 and 5415, Business and Professions Code.
Reference: Sections 5301 and 5463, Business and Professions Code.

HISTORY:

1. New section filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2511. Retention of Classification.

A landscaped freeway retains its classification:

(a) When a construction project results in the temporary removal of the plant material. If the plant material is not replaced within six months after the Department accepts the construction project, the Chief Landscape Architect shall review the classification upon the receipt of a written request. No request for review or review shall be made until six months after the Department accepts the construction contract. If the Chief Landscape Architect determines that it is not reasonably certain that new Plantings, sufficient to constitute a landscaped freeway, will be placed within two fiscal years of the date of the request for review, the section is declassified, or,

(b) When a catastrophic event, such as a disease, pests, freeze or fire kills over 50% of the plantings in a segment, or over 3000 trees or shrubs of the same variety within a three year period throughout the state. In the case of such a catastrophic event, the Chief

Landscape Architect shall review the classification upon receipt of a written request. The section will be declassified unless a concept plan to replace the plantings is adopted within two years after the conclusion of the catastrophic event or if the Chief Landscape Architect determines that it is not reasonably certain that new Plantings, sufficient to constitute a landscaped freeway, will be placed within six fiscal years of the date of the request for review.

AUTHORITY:

Note: Authority cited: Sections 5250 and 5415, Business and Professions Code.
Reference: Section 5216, Business and Professions Code.

HISTORY:

1. New final paragraph and new Note filed 7-25-96 as an emergency; operative 7-25-96 (Register 96, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-22-96 or emergency language will be repealed by operation of law on the following day.
2. Reinstatement of section as it existed prior to 7-25-96 emergency amendment by operation of Government Code section 11346.1(f) (Register 97, No. 37).
3. New final paragraph and new Note filed 9-11-97; operative 10-11-97 (Register 97, No. 37).
4. Renumbering of former section 2511 to section 2507 and renumbering of former section 2515 to section 2511, including amendment of section and new Note, filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
5. Repealer and new section heading and amendment of section filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2512. Request for Reclassification.

A person may make a written request to the Chief Landscape Architect, to classify a freeway or a section of freeway as a landscaped freeway, or to declassify a freeway or section of freeway classified as a landscaped freeway.

(a) The request (1) shall be in writing; (2) shall be signed and dated; (3) shall identify the section of freeway by county, route and post mile or kilometer post; and (4) shall contain a detailed statement of reasons supporting the proposed freeway classification or declassification. There will be a \$300 fee for each request; such fee will be refunded if the request is granted.

(b) Within 60 days after receiving the written request, a Landscape Architect shall inspect the freeway or section of freeway covered by the request. All findings made during this inspection are presented to the Chief Landscape Architect, who shall determine whether to reclassify the freeway section. The determination of whether to reclassify is based upon whether the freeway section meets the criteria of the Act and these regulations on the date of determination. A field review need not be made if a

review has taken place within two years of the date of the request, unless the request specifies major changes have occurred within the two years preceding the request.

(c) Within 90 days after receiving a request for reclassification, the person making the request is notified in writing by the Chief Landscape Architect of the determination and the reasons therefore. If the request is not granted, the person making the request may appeal this determination to the Deputy Director Project Development, ~~pursuant to the provisions of Section 2241(b) of these regulations.~~ **and a hearing will be conducted in accordance with the provisions of the California Administrative Procedures Act, Govt. Code Section 11500 et seq., except that the proceedings will be recorded by electronic means only, unless a party agrees in advance to pay all costs of having the proceeding transcribed by a certified court reporter. An unsuccessful appellate will be responsible for paying all costs assessed by the Office of Administrative Law.**

AUTHORITY:

Note: Authority cited: Sections 5250 and 5415, Business and Professions Code.

Reference: Section 5216, Business and Professions Code.

HISTORY:

1. Renumbering of former section 2512 to section 2508 and renumbering of former section 2516 to section 2512, including amendment of section and new Note, filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
2. Amendment of subsection (c) filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).

§ 2513. Displays Viewed Primarily from Landscaped Freeways.

If a section of freeway is classified as a landscaped freeway, the Department determines if there is a Display adjacent to that section of freeway which is designed to be viewed primarily by a person traveling on the landscaped section of a freeway.

(a) A Display is designed to be viewed primarily from a landscaped freeway section when the Display is within the limits of a landscaped freeway and its copy is legible to motorists from within the landscaped segment.

(b) All determinations are made in the present. The fact the Display may have been designed primarily to be viewed from another roadway at some point in the past is not determinative.

(c) Notwithstanding subsection (a) above, if a Display's copy is legible from both a landscaped freeway and another freeway or highway, a rebuttable presumption is

established that the Display is designed primarily to be viewed from the freeway or highway with the highest daily traffic count. This presumption may be rebutted by use of the following criteria:

(1) Traffic Count. Comparing the difference between the average daily traffic count for the landscaped freeway and the other freeway or highway.

(2) Angle. The angle of placement of the Display.

(3) Visual Approach Distance. The distance the Display is legible measured along each freeway or highway it is visible from.

(4) Height. Whether the Display's height makes the Display legible to more motorists on one freeway or highway or legible to motorists for a longer period of time on one freeway or highway.

(5) Relative Size. The prominence the Display has from each freeway or highway.

(6) Copy. Does the advertising message, or have past advertising messages, give specific directions for persons on only one freeway or highway.

(7) Owner's Representations. ~~Has~~ The Display has been represented by the owner to be viewed primarily by persons traveling on one freeway or highway.

AUTHORITY:

Note: Authority cited: Sections 5250 and 5415, Business and Professions Code.

Reference: Sections 5216 and 5440, Business and Professions Code.

HISTORY:

1. Renumbering of former section 2513 to section 2509 and renumbering of former section 2517 to section 2513, including amendment of section and new Note, filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
2. Amendment of subsection (c) filed 11-23-2004; operative 12-23-2004 (Register 2004, No. 48).